

CORPORATE AND M&A

Irish merger control - five key changes *Competition (Amendment) Bill 2022*

Significant and wide-ranging new powers of intervention will be given to the Irish merger control authority under the recently-published Competition (Amendment) Bill 2022 (**Bill**).

These additional Competition and Consumer Protection Commission (CCPC) merger control powers will add uncertainty and possible time-delay before certain deals can safely complete under Irish merger control. In addition, companies which come under Irish merger control scrutiny may be subjected to new criminal penalties and civil remedies.

In this briefing note we set out five key changes introduced by the Bill to Irish merger control and which may impact certainty of deal completion in M&A transactions.

5 MIN READ

01

A system for the compulsory notification of “below-threshold” deals

CURRENT REGIME

- Under the Competition Act 2002 (as amended) (Competition Act), the compulsory notification thresholds for a deal are:
 - » a combined turnover in Ireland of at least €60m of all parties to the deal
 - » each of 2 parties to the deal with turnover in Ireland of at least €10m (*these thresholds don’t apply to “media mergers” under the Competition Act*).
- Currently, parties to a below-threshold deal can voluntarily notify the CCPC to avoid an investigation by (and obtain a green light from) the CCPC if there is a concern that the deal raises material competition issues in Ireland (e.g. if it substantially lessens competition (SLC) in Ireland).

PROPOSED CHANGES

- Under the Bill, the CCPC can “require” parties to a below-threshold deal to notify the CCPC if it thinks that the deal “may... have an effect on competition” in Ireland.
- This requirement to notify the CCPC can apply whether or not the deal has already completed.
- Many of the Irish merger control suspensory requirements will apply to such notifications, including the CCPC imposing “interim measures” (see below).
- Even if such a below-threshold deal isn’t notified to the CCPC by the parties as required by the CCPC, the CCPC can still proceed to review the deal as if it had been notified; and the CCPC can also impose interim measures.
- The Bill sets a potentially low “effect on competition” bar for the CCPC to be able to call-in a below-threshold deal for notification.

02

The CCPC will be able to impose interim measures on deals

CURRENT REGIME

- Currently, the CCPC can’t impose interim measures in relation to notified deals, (ie deals which have been notified but not yet completed), under the Competition Act.

PROPOSED CHANGES

- Under the Bill, the CCPC will be able to impose interim measures on the parties to, primarily, notified deals if there is a risk that they “may have an effect on competition” in Ireland (again potentially low competition bar).
- Failure to comply with interim measures is an offence (i.e. fines of up to €250k (plus daily default fines)).
- The CCPC can choose from a wide range of possible interim measures, including the parties refraining from taking steps towards putting the deal into effect, or from further putting it into effect.

03

Gun-jumping - An offence to put a deal notified to the CCPC into effect before it is approved by the CCPC

CURRENT REGIME

- Currently, a deal that is, or should have been, notified to the CCPC and is put into effect before it is approved by the CCPC, is void under the Competition Act.
- It is an offence for undertakings involved and certain individuals to fail to notify a deal to the CCPC where required and then complete the deal.

PROPOSED CHANGES

- Under the Bill, it will also be an offence to put a notified deal into effect before CCPC approval.
- The undertakings involved, or persons in control of such undertakings who knowingly and wilfully permit the breach, are guilty of the offence and are subject to fines of up to €250k (plus daily default fines).
- This change significantly increases risks for businesses which complete deals prior to CCPC approval.

04

Gun-jumping - Power of the CCPC to bring gun-jumping prosecutions before the District Courts

CURRENT REGIME

- Currently, the Director of Public Prosecutions brings summary proceedings before the District Courts for breach of the Irish merger control prohibition on gun-jumping.

PROPOSED CHANGES

- Under the Bill, the CCPC will be able to bring its own summary proceedings for such breaches, including for failure to comply with information requirements by the CCPC.

05

The CCPC will be able to unwind/dissolve completed deals

CURRENT REGIME

- Currently, the CCPC can't unwind or dissolve completed deals under the Competition Act.

PROPOSED CHANGES

- Under the Bill, where the CCPC finds “on completion of a full investigation” that a deal would SLC in Ireland and the deal, that required to be (or was voluntarily) notified, had been put into effect without prior CCPC approval, the CCPC will be able to require that the:
 - » deal be unwound or dissolved (including through the dissolution of the deal or the disposal of the shares or assets acquired) to restore the situation prior to the deal having been put into effect, or
 - » parties take appropriate steps to restore (as far as practicable) the situation before the deal was put into effect, where it is not possible to unwind or dissolve the deal.

COMMENT

These additional CCPC merger control powers will add uncertainty and possible time-delay before certain deals can safely complete under Irish merger control. Market monitoring of deals by the CCPC will become an even more important aspect of the CCPC’s overall Irish merger control functions. It’s notable that while the compulsory notification thresholds under the Competition Act remain the same, the Bill gives greater liberty to the CCPC to intervene in relation to below-threshold deals (potentially where there is only some effect on competition).

It is likely that the changes to Irish merger control will lead to an increase in the level of voluntary notifications in respect of deals that are under the compulsory notification threshold, as parties seek to eliminate uncertainty in the context of deal completion.

These wider powers of intervention under Irish merger control are similar to the European Commission’s ability to intervene under EU merger control as well as the Competition and Markets authority’s powers of intervention under UK merger control. Given the wider objective of the Bill to give greater powers of competition law enforcement to the CCPC (ie as a result of the “ECN+ Directive”), the Bill is a priority piece of legislation for the Irish Government. It is expected that legislation will be enacted quickly so as to align Irish competition law with EU standards.

For more information on this topic please contact [Richard Grey](#), Partner and Head M&A or [Alan McCarthy](#), Partner in our [EU, Competition & Procurement team](#).



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